

**APPROVED AND DISAPPROVED NON-STATUTORY DEPARTURE REASONS
CITED BY SENTENCING COURTS CHART**

<u>Departure Reason Cited</u>	<u>Approved or Disapproved</u>	<u>Type of Departure</u>	<u>Case Name</u>
Offender absconded for 2 years while on bond, not amenable to probation.	Approved	Upward dispositional	<i>State v. Billington</i>, 24 Kan. App. 2d 759, 953 P.2d 1059 (1998)
Offender had history of drug convictions that demonstrated his repeated involvement in drugs.	Approved	Upward durational	<i>State v. Hernandez</i>, 24 Kan. App. 2d 285, 944 P.2d 188 (1997), <i>rev. denied</i> 263 Kan. 888 (1997)
Child victim of crime was sexual aggressor.	Approved	Downward durational	<i>State v. Rush</i>, 24 Kan. App. 2d 113, 942 P.2d 55 (1997), <i>rev. denied</i> 262 Kan. 968 (1997)
Total senseless and random nature of shooting of victim.	Approved	Upward durational	<i>State v. Alderson</i>, 260 Kan. 445, 922 P.2d 435 (1996). [See also <i>State v. Alderson</i>, 266 Kan. 603, 972 P.2d 1112 (1999)]
No prior felony convictions.	Approved	Downward durational and dispositional	<i>State v. Favela</i>, 259 Kan. 215, 911 P.2d 792 (1996) [See also <i>State v. Murphy</i>, 270 Kan. 804, 19 P.3d 80, (2001)]
Brother of offender was stabbed and injured by offender's victim.	Approved	Downward durational and dispositional	<i>State v. Favela</i>

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Offender's age and immaturity.	Approved	Downward durational and dispositional	<i>State v. Favela</i> [See also <i>State v. Murphy</i>]
Offender failed to render aid to victim.	Approved	Upward durational and dispositional	<i>State v. Hunter</i> , 22 Kan. App. 2d 103, 911 P.2d 1121 (1996), <i>rev. denied</i> 259 Kan. 929 (1996)
Offender's age and immaturity made her less likely to commit offenses in the future.	Approved - when combined with other factors of the case.	Downward dispositional	<i>State v. Crawford</i> , 21 Kan. App. 2d 859, 908 P.2d 638 (1995)
Offender's family responsibilities of raising three children.	Approved - when combined with other factors of the case.	Downward dispositional	<i>State v. Crawford</i>
Impressive employment record.	Approved - when combined with other factors of the case.	Downward dispositional	<i>State v. Crawford</i> [See also <i>State v. Murphy</i>]
Rehabilitation efforts.	Approved - when combined with other factors of the case.	Downward dispositional	<i>State v. Crawford</i>
Uncharged criminal conduct which amounted to a continuing pattern of abuse.	Approved - to improve public safety, which is one of the purposes of the Guidelines.	Upward durational	<i>State v. Zuck</i> , 21 Kan. App. 2d 597, 904 P.2d 1005 (1995), <i>rev. denied</i> 258 Kan. 863 (1995)
Age of prior conviction.	Approved	Downward dispositional	<i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995)
Prior conviction unrelated to current offense.	Approved	Downward dispositional	<i>State v. Richardson</i> [See also <i>State v. Heath</i> , 21 Kan. App. 2d 410, 901 P.2d 29 (1995)]

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Statement of victim's family in favor of a nonprison sentence.	Approved	Downward dispositional	<i>State v. Richardson</i> [See also <i>State v. Heath</i>]
Offender not a threat to society and had gone to the victim's house out of concern.	Approved	Downward dispositional	<i>State v. Grady</i> , 258 Kan. 72, 900 P.2d 227 (1995)
Defense failed but was not meritless.	Approved - if it shows no predisposition to commit crimes.	Downward dispositional	<i>State v. Grady</i> , 258 Kan. 72, 900 P.2d 227 (1995)
Offender committed many burglaries while on parole and thus not amenable to probation supervision.	Approved	Upward dispositional (<i>Meyer</i> involved either a upward dispositional or upward durational)	<i>State v. Trimble</i> , 21 Kan. App. 2d 32, 894 P.2d 920 (1995) [See also <i>State v. Meyer</i> , 25 Kan. App. 2d 195, 960 P.2d 261 (1998), <i>rev. denied</i> 265 Kan. 888]
Offender knowingly lied in an affidavit to the trial court.	Approved	Upward durational	<i>State v. Mitchell</i> , 262 Kan. 434, 939 P.2d 879 (1997)
Minor female victim's aggressiveness and actions leading up to act of sexual intercourse may be considered at sentencing.	Approved - under the facts of this case.	Downward durational	<i>State v. Sampsel</i> , 268 Kan. 264, 997 P.2d 664 (2000)
Criminal offender's veracity, or the lack thereof, when the offender testifies on his/her own behalf.	Approved	Upward durational	<i>State v. Smart</i> , 26 Kan. App. 2d 808, 995 P.2d 407 (1999)

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A murder while operating a crack house created danger to society as a whole.	Disapproved - insufficient evidence to support the finding in this case.	Upward durational	<i>State v. Bailey</i>
Victim of sex crime vulnerable because of young age (7 years).	Disapproved - age of the victim is a statutory element of the offense.	Upward durational	<i>State v. Salcido-Corral</i>, 262 Kan. 392, 940 P.2d 11 (1997)
Offender on parole at time committed crimes.	Disapproved - statute addresses how parole status affects sentence, so offender's parole status alone is not a reason to depart.	Upward durational	<i>State v. Hawes</i>, 22 Kan. App. 2d 837, 923 P.2d 1064 (1996) [See also <i>State v. Yardley</i>, 267 Kan. 37, 978 P.2d 886 (1999)]
Uncharged prior conduct unrelated to instant offense.	Disapproved - violates the presumption of innocence.	Upward durational	<i>State v. Hawes</i>
Prior excessive nonperson felonies.	Disapproved - shows only persistent criminal conduct.	Upward durational	<i>State v. Hawes</i>
Finding that prior property crimes were committed to facilitate drug use.	Disapproved - finding was unsubstantiated in the record.	Upward durational	<i>State v. Hawes</i>
Sentencing court's general disagreement with the guidelines and classification of offense under the guidelines.	Disapproved	Downward dispositional	<i>State v. Heath</i>, 21 Kan. App. 2d 410, 901 P.2d 29 (1995)
Possibility that offender's actions could have resulted in death.	Disapproved - not unique to the circumstances of the offender's case.	Upward durational	<i>State v. Caldwell</i>, 21 Kan. App. 2d 466, 901 P.2d 35 (1995), rev. denied 258 Kan. 859 (1995)

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Offender's failure to take advantage of prior lenience by the court.	Disapproved - court stated conclusion without finding underlying facts.	Upward durational	<i>State v. Caldwell</i>
Escalating nature of crimes.	Disapproved - court stated conclusion without finding underlying facts.	Upward durational	<i>State v. Caldwell</i>
Legislature's intent to punish one crime more severely than another.	Disapproved - severity level and criminal history are already factored into the guidelines.	Upward durational	<i>State v. Caldwell</i>
Expert testimony.	Disapproved - expert testimony that excludes consideration of the crime committed should not as a matter of law, be relied upon by the sentencing court in a departure sentence.	Downward dispositional	<i>State v. Chrisco</i>, 26 Kan. App. 2d 816, 995 P.2d 401 (1999)
Lack of premeditation.	Disapproved - the lack of premeditation is common to all voluntary manslaughter crimes.	Downward dispositional	<i>State v. Grady</i>, 258 Kan. 72, 900 P.2d 227 (1995)
Offender had "shown a pattern of exploiting young girls."	Disapproved - finding was not sufficiently substantiated in the record.	Upward dispositional	<i>State v. French</i>, 26 Kan. App. 2d 24, 977 P.2d 281 (1999) [See also <i>State v. Peterson</i>, 25 Kan. App. 2d 354, 964 P.2d 695, (1998), <i>rev. denied</i> 266 Kan. 1114 (1998)]

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Nonamenability to probation based on the offender's disregard of previous court orders.	Approved - although four nonstatutory reasons were also relied upon by the sentencing court, nonamenability to probation was sufficient by itself.	Upward dispositional	<i>State v. Rodriquez</i> , 269 Kan. 633, 8 P.3d 712 (2000)
Offender's attitude towards the seriousness of the offense and the intentional missing of a court date when the offender absconded.	Disapproved - no substantial and compelling reasons to support a dispositional departure for nonstatutory reasons.	Upward dispositional	<i>State v. McKay</i> , 28 Kan. App. 2d 185, 12 P.3d 924 (2000) [See also <i>State v. McKay</i> , 271 Kan. 725, 26 P.3d 58, (2001)]
Offender had nothing to gain from the incident.	Approved - nonstatutory factors may be relied upon if they are supported by the evidence.	Downward dispositional	<i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)
Offender did not instigate the incident.	Approved - see above.	Downward dispositional	<i>State v. Murphy</i>
Offender had already been accepted into Labette.	Approved - see above.	Downward dispositional	<i>State v. Murphy</i>
Offender had a supportive family.	Approved - see above.	Downward dispositional	<i>State v. Murphy</i>

<u>Departure Reason Cited</u>	<u>Approved or Disapproved</u>	<u>Type of Departure</u>	<u>Case Name</u>
Offender's role as the ring leader in a identity theft ring	Approved – Case reversed on other grounds.	Upward dispositional	<i>State v. Martin</i> , ___ Kan. App. 2d ___, 87P.3d 337 (5/16/03)
Offender owed a fiduciary duty to his clients	Disapproved	Upward durational	<i>State v. Matthews</i> , 32 Kan. App. 2d 281, ___ P.3d ___ (2004)
The court found the victims of the forgeries to be the children in the baseball program and that the children, because of their ages, were particularly vulnerable to the offender's actions	Disapproved	Upward dispositional	<i>State v. Neri</i> , ___ Kan. App. 2d ___, ___ P.3d ___ (No. 91, 020, filed 8/13/2004)
<u>Additional Departure Case Information:</u>			
On remand for resentencing, a sentencing court may state the “substantial and compelling reasons” justifying a departure, even if the reasons were not stated at the original sentencing.			<i>State v. Peterson</i> , 25 Kan. App. 2d 354, 964 P.2d 695, (1998), <i>rev. denied</i> 266 Kan. 1114 (1998)